No. 780

In the Supreme Court of the United States

OCTOBER TERM, 1911

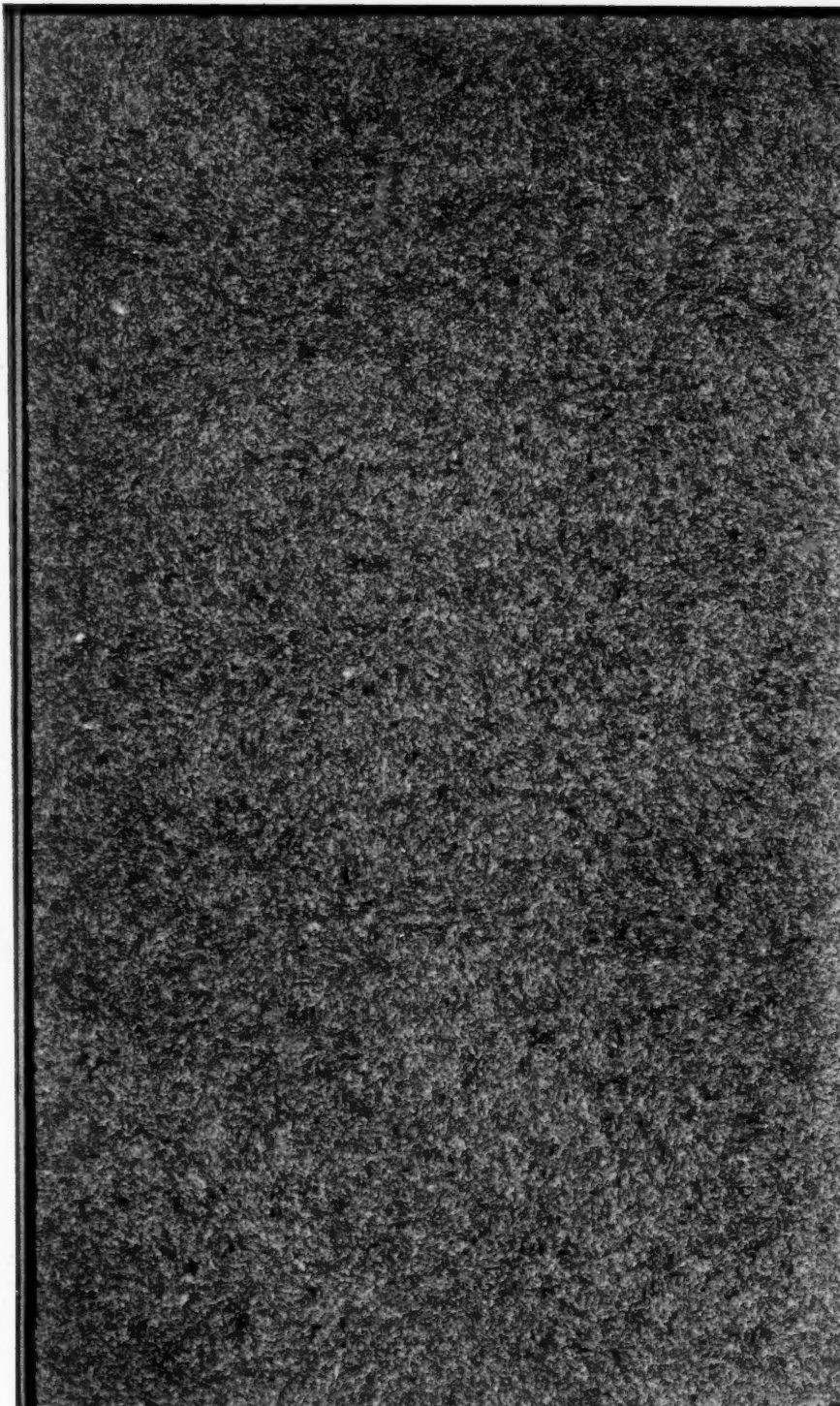
THE PROCTOR AND GAMBLE COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR THE UNITED STATES.



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The United States concurs in the position taken herein by its co-appellees, but it leaves the argument on the merits to them.

In this brief we desire to present only the question of the jurisdiction of the Commerce Court and to state some things beyond the considerations presented on this question in the Hooker case, No. 773, just argued.

In accordance with the suggestion made during the argument in the Hooker case, we have provided the clerk with sufficient copies for the court of the following pamphlets: 1, a pamphlet entitled

"Public—No. 218," which contains the full text of the Commerce Court act exactly as it was passed, including the provisions amending certain provisions of the Hepburn Act and reciting those sections as so amended; 2, a pamphlet entitled "The act to regulate commerce (as amended, including the act to create a Commerce Court, etc., approved June 18, 1910) and acts supplementary thereto." This pamphlet, in its statement of the Commerce Court act, which begins at page 40, omits sections 7 to 14, inclusive, because those sections were amendments of the Hepburn Act as amended in the earlier part of the pamphlet; 3, a pamphlet containing the Hepburn Act as it originally stood before the creation of the Commerce Court.

STATEMENT.

Proctor and Gamble petitioned the commission for an order directing the railroads to cease and desist from exacting demurrage under certain rules established by the railroads.

The commission decided that the rules were reasonable, denied the relief, and dismissed the complaint.

Proctor and Gamble then brought this petition in the Commerce Court to set aside and annul the order of the commission dismissing their petition, and for a judgment against the railroads for the amount of the demurrage claimed to have been unlawfully exacted, and for an injunction *against the railroads* from collecting further demurrage.

ARGUMENT.

The Commerce Court was given no jurisdiction to set aside an order of the commission which merely denies relief and dismisses the petition.

I.

So far as we can find there is no precedent in the old common law either for a suit in equity to establish a future reasonable rate, as was the situation in the Hooker case, or to enjoin the future operation of a rule of a railroad on the ground that it was unreasonable, as is the effort here.

Nor are we aware of any instance in which, since the establishment of the commission, any Federal court has undertaken that power or has been asked to undertake that power. The Peavey case, decided at this term, which was cited by counsel for Hooker, concerned an affirmative order of the commission, and was the ordinary case in respect to subject matter. The point there was the identity of the parties. Of course the Government does not claim that shippers have no rights in the Commerce Court. They have the undoubted right to apply to that court to enforce orders of the commission in their favor (except orders for the payment of money), but neither they nor the carriers have any right to the unprecedented relief which was claimed in the Hooker case and is claimed here, to set aside purely *negative* orders of the commission.

As to the power to establish reasonable rates for the future, even the Interstate Commerce Commission was held to have had no such authority prior to the express grant of that power by the Hepburn Act.

The sole relief ever allowed at common law, so far as we have been able to ascertain, was a recovery of damages for past abuses.

II.

The legislation of Congress clearly shows that no such jurisdiction was ever intended to be given either to the circuit courts under the Hepburn Act or to the Commerce Court under the Commerce Court act.

There are several sections of the Hepburn Act which show that only affirmative orders of the commission, that is to say orders which required some change from existing conditions, were the subject of jurisdiction in the circuit courts.

Several provisions of the Hepburn Act show plainly enough that only positive, affirmative, directory orders were intended to be submitted to the courts.

Section 4 amends section 15 of the original act so as to provide that when the commission has determined that a rate or a regulation is *unreasonable* and that the carrier shall desist therefrom, such orders shall take effect for not less than thirty days and shall continue in force for not ex-

ceeding two years, unless "the same shall be suspended or modified or set aside by the commission or be suspended or set aside by a court of competent jurisdiction." This provision clearly applied only to affirmative orders and kept their power in existence for the period of two years. It did not apply to purely negative orders, and there was nothing whatever to prevent a shipper whose complaint had been rejected by the commission from bringing a new complaint one day later and presenting new evidence to the commission.

Section 5 amends section 16 of the former act and provides for orders of the commission awarding money damages against the carrier and gives the process by which the commission or any person injured can enforce such order against a recalcitrant carrier.

The same section further provides that "every order" of the commission shall be forthwith served by mailing to the carrier and that "it shall be the duty of every common carrier, its agents and employes, to observe and comply with such orders so long as the same shall remain in effect."

The section proceeds again to indicate that the orders in respect to which jurisdiction is entrusted to the court are affirmative and not merely negative orders, by providing that the venue of the suits brought against the commission "to enjoin, set aside, annul, or suspend any order or requirement of the commission shall be in the district

where the carrier against whom such order or requirement may have been made has its principal operating office."

Section 7 amends section 20 of the original act and provides that the commission may require annual reports, and that if the carrier disobeys the requirement the commission may go to the court to enforce it.

III.

The Commerce Court act transferred to the Commerce Court no jurisdiction not previously existing in the circuit courts.

This is specifically stated in the Commerce Court act in the opening clause. And again, further down in the first section, where it says: "Nothing contained in this act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court."

The act furthermore leaves to the circuit courts all orders for the payment of money, evidently on the theory that such orders should be dealt with by the court which can have the aid of a jury and which can proceed as in all ordinary civil cases involving a money right.

Throughout the Commerce Court act, in numerous provisions which are referred to in the brief in the Hooker case, it is made clear that no intention existed on the part of Congress to extend the

jurisdiction of the Commerce Court either beyond the common-law jurisdiction of the circuit courts or the jurisdiction which those courts received under the Hepburn Act. Indeed, as we have said, the Commerce Court act expressly provides that no jurisdiction shall go to the Commerce Court which did not formerly exist in the circuit courts.

IV.

The particular petition involved in this case further asks, as one element of relief, that the Commerce Court should require the railroads to repay to the petitioners the money which had been exacted as demurrage.

The Commerce Court took jurisdiction and decided against this claim on the merits.

We think the Commerce Court was plainly in error in taking jurisdiction at all, because the act clearly intends to leave to the circuit courts all claims for money. It gave the Commerce Court no jury with which to pass upon such claims.

The Hepburn Act, while it fully covered the case of affirmative orders of the commission in reference to money claims, by providing that the circuit courts might entertain actions to recover the money awarded by such orders, made no provision whatever for interference by the court in case of refusal by the commission to allow the money claimed.

Section 9 of the Hepburn Act provides that a person claiming damages against a carrier may

make his complaint either to the commission or to the court, but must elect which of these remedies he should pursue.

The Commerce Court act did not pass to the Commerce Court any jurisdiction with reference to orders for the payment of mony, but expressly reserved those matters in the circuit courts.

The judgment should be reversed and the cause remanded to the Commerce Court with instructions to dismiss the petition for lack of jurisdiction.

WINFRED T. DENISON,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

JANUARY 11, 1912.

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PROCTER & GAMBLE COMPANY *v.* UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, ET AL.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

No. 780. Argued January 11, 12, 1912.—Decided June 7, 1912.

Subdivision 2 of § 1 of the act creating the Commerce Court, now § 207 of the new Judicial Code, giving the Commerce Court jurisdiction of cases brought to enjoin, set aside, annul or suspend orders of the Interstate Commerce Commission, confers on that court jurisdiction only to entertain complaints as to affirmative orders of the Commission.

Under the act, the Commerce Court is not given jurisdiction to redress complaints based exclusively, as in this case, on the ground that the Commission has refused the relief asked on the ground that it could not award it.

To construe the act creating the Commerce Court so as to give it jurisdiction to originally interpret the administrative features of the Interstate Commerce Act and to construe a refusal of the Commission to grant relief as an affirmative order would frustrate the legislative policy which led to the adoption of the act and would multiply the evils which it was designed to prevent.

The act creating the Commerce Court was intended to be a part of the existing system for regulating interstate commerce. While originally the duty of determining whether an order of the Commission should be enforced carried with it the obligation to consider both the facts and the law, it had come to pass prior to the adoption of the act creating the Commerce Court that the jurisdiction of courts over orders of the Commission is confined to determining whether they were in violation of the Constitution or failed to conform to statutory authority, and to ascertaining whether power had been arbitrarily exercised beyond the power conferred.

Under the express reservation in the last paragraph of § 207, Judicial Code, a claim that a constitutional right asserted in a petition to the Interstate Commerce Commission has been denied by that body, if independent of all questions of rights and remedies under the Inter-

state Commerce Act, is beyond the jurisdiction of the Commerce Court.

Where the constitutional question is dependent upon provisions of the Interstate Commerce Act, it is subject to the precedent action of the Commission, as to which the Commerce Court only has jurisdiction in case of a prior affirmative order of the Commission.

The Commerce Court has no jurisdiction over a claim made by the owner of private cars to recover on a money demand based on the illegality of charges alleged to have been wrongfully exacted by the railroad companies and which the Commission had refused to allow.

188 Fed. Rep. 221, reversed.

THE facts, which involve the construction of the statute creating the Commerce Court and the determination of extent of jurisdiction of that court, are stated in the opinion.

Mr. George H. Warington for appellants.[1]

Mr. Francis B. James, for appellants in Nos. 773 and 774, argued simultaneously herewith. See p. 302, *post.*

Mr. Assistant Attorney General Denison, with whom *Mr. Blackburn Esterline*, Special Assistant to the Attorney General, was on the brief, for the United States:[1]

The Commerce Court was given no jurisdiction to set aside the order of the Commission which merely refused relief and dismissed the petition. The Commerce Court is given no jurisdiction not heretofore possessed by the Circuit Courts; and there is no precedent in the common law for a suit in equity to establish a future reasonable rate, or to enjoin the future operation of a rule of a railroad on the ground that it was unreasonable.

Nor has there been any instance in which, since the establishment of the Interstate Commerce Commission, any Federal court has undertaken that power, or has been asked to undertake it.

[1] See also abstract of argument of appellant in Nos. 773 and 774, p. 303, *post.*

Even the Interstate Commerce Commission itself had no authority to establish reasonable rates for the future, prior to the express grant of that power by the Hepburn Act.

The legislation of Congress clearly shows that no such jurisdiction was intended to be given either to the Circuit Courts by the Hepburn Act, or to the Commerce Court by the Commerce Court Act.

The Hepburn Act shows in several sections that only affirmative orders of the Commission, that is to say, orders which required some change from existing conditions, were the subject of jurisdiction in the Circuit Courts.

Similarly, the Commerce Court Act in several sections indicates the same intention.

This particular petition asked as one element of relief that the Commerce Court should require the railroads to pay money to the petitioners. The court had no power to take jurisdiction of such a claim for money, because such claims are left by the Commerce Court Act to the Circuit Courts. The Commerce Court would have been given the aid of a jury system if it had been intended to have this jurisdiction.

Mr. P. J. Farrell for the Interstate Commerce Commission.

Mr. Edward Barton for the Cincinnati, Hamilton & Dayton Railway Company, appellee.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Having three manufacturing plants, one at Ivorydale, Ohio, a second at Port Ivory, New York, and a third at Kansas City, Kansas, in which they carried on the business of refining cottonseed and other oils and of manufacturing soap and other products from grease and oil, the Procter &

Gamble Company, to facilitate the transportation to their factories of the substances required for their operation and of shipping out the finished products, became the owner of about five hundred railroad tank cars. The cars were exclusively devoted to the business of the company in the following manner: On the property of the company in the yards about their factories there were railroad tracks belonging to the company which served for holding empty or loaded cars, the cars thus situated being held for storage and for movement from place to place, as business required. At each of the factories there was also an interchange track connected with the tracks in the yards and with the tracks of the railroad company or companies through whom the business of shipping in interstate commerce to and from the factories was carried on. The movement of cars to the interchange tracks for outward shipment and from the interchange tracks when they were left there by railroad companies was at two of the factories carried on by the company through its own employés and motive power. At the other one this work was done by a railroad company, who made an independent and special charge for the service. The transportation of the private tank cars of the corporation by the railroad companies was governed by established rules, and the price paid to the railroads for transporting the commodities of the company in its private cars was the regular price fixed for such commodities in the established tariffs. The railroads, however, paid to the company for the use of its private cars a fixed sum per mile, this payment being also stated in the regular established tariffs in compliance with law. A portion of the carrier's rule (Rule 29), relating to the subject of compensation for hauling such private tank cars is in the margin.[1]

[1] Rule 29. (Sec. 1.) In providing ratings in this classification for articles in tank cars, the carriers whose tariffs are governed by this classification do not assume any obligation to furnish tank cars in

In 1910 among others the railroads engaged in transporting tank cars from the plants of the Procter & Gamble Company adopted a system of rules governing the payment of demurrage by shippers. The provisions of these rules pertinent to this case are excerpted in the margin.[1]

The rules in question were prepared by a committee of the National Association of Railroad Commissioners composed of a representative from each State having a rail-

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cases where they do not own or have not made arrangements for supplying such equipment. When tank cars are furnished by shippers or owners, mileage at the rate of three-quarters (¾) of one cent per mile will be allowed for the use of such tank cars, loaded or empty, provided the cars are properly equipped. No mileage will be allowed on cars switched at terminals nor for movement of cars under empty freight car tariffs.

[1] Rule I.

Cars subject to Rules.

Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to these demurrage rules, except as follows:

(*a*) Cars loaded with live stock.

(*b*) Empty cars placed for loading coal at mines or mine sidings, or coke at coke ovens.

(*c*) Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the order of a shipper.

NOTE.—Private cars while in railroad service, whether on carrier's or private tracks, are subject to these demurrage rules to the same extent as cars of railroad ownership.

(Empty private cars are in railroad service from the time they are placed by the carriers for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and cars are regularly released. Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks and thereby tendered to the carrier for movement. If such cars are subsequently returned empty, they are out of service when withdrawn by the industry from the interchange; if returned under load, railroad service is not at an end until the lading is duly removed.)

road commission and a member of the Interstate Commerce Commission, and were adopted in convention by the National Association and were subsequently approved by the Interstate Commerce Commission, although putting them in force was not imperatively prescribed by that body.

The Procter & Gamble Company, dissatisfied with the regulations concerning demurrage, in so far as they imposed in certain respects charges upon its tank cars, filed a complaint with the Interstate Commerce Commission charging the rules to be repugnant to the act to regulate commerce because unjust and oppressive and because to enforce them would create preferences and discriminations forbidden by the act. After hearing, the Commission made a report declaring that the rules complained of were in no sense in conflict with the act to regulate commerce, and on the contrary conformed to that act and tended to prevent and repress unlawful preferences and discriminations. An award of relief was therefore denied. In February, 1911, the Procter & Gamble Company filed a petition in the Commerce Court of the United States making defendants the United States, the Interstate Commerce Commission and the railroads who had been complained of in the proceeding before the Commission. The petition recited the facts stated above as to the character of the business of the petitioner, the ownership of tank cars, etc., the establishment of the rules for demurrage, their repugnancy to the act to regulate commerce, the injury which had resulted from being compelled to pay the charges for demurrage in accordance with the rules, the application made to the Commission and the refusal of that body to award relief. The conception upon which the petition was based is shown in the excerpt in the margin,[1] wherein it was also charged that the order of the

[1] Complainant avers that said order of said Interstate Commerce Commission, in dismissing its complaint as above set forth, is null and

Commission dismissing the complaint as above set forth "is null and void and beyond the power of said Interstate Commerce Commission, in that it sustains the validity of . . . said demurrage rules."

The prayer was as follows:

"Wherefore, complainant prays that the aforesaid order of said Interstate Commerce Commission made in said cause No. 3208 on November 14, 1910, be set aside and annulled, and that the defendant railway companies, and each of them, be enjoined from collecting or attempting to collect any demurrage charges upon complainant's loaded tank cars after said cars have been delivered to complainant and placed upon tracks owned or controlled by it; and further, that said defendant railway companies and each of them be required to repay to complainant herein all sums found to have been wrongfully collected by them, or any of them, under the rule here complained of; and

void and beyond the power of said Interstate Commerce Commission, in that it sustains the validity of Rule I of said demurrage; that said Rule I in so far as it provides that privately owned cars under lading on private tracks are in railroad service and subject to the demurrage charges imposed by said tariffs until the lading is removed, is unjust and unreasonable, in that it deprives complainant of the right to use its said private cars upon private tracks for its own purposes without paying the defendant railway companies demurrage charges therefor, after said private cars have been delivered to complainant and have actually ceased to be engaged in railroad service; that the charges exacted by the defendant railway companies of complainant under said provision of said rule permit said defendants to take complainant's property without compensation, and deprive it of its property without due process of law, in violation of the Constitution of the United States, and particularly of Article V in amendment thereof, and that said provision of said rule is in violation of the said Act to Regulate Commerce and particularly of §§ 1 and 15 thereof as amended June 29, 1906; that said defendants are now exacting such demurrage charges under the provisions of said rule, and will continue to do so, unless the said order of said Interstate Commerce Commission is set aside and annulled by this court, and defendant railway companies are enjoined from enforcing the provisions of said rule.

that complainant be granted such other and further relief as it may be entitled to in the premises."

The railroads answered the bill. The United States and the Interstate Commerce Commission appearing for the purpose, challenged the jurisdiction of the court to entertain the cause, and moved to dismiss, upon this general ground: "Because the order of the Interstate Commerce Commission complained of directed no affirmative relief and the negative order of the Commission dismissing the complaint affords no ground for an action in this court;" and upon the following more detailed specifications filed on behalf of the United States:

"(*a*) It prays that the order of the Interstate Commerce Commission be enjoined, when said order directed no action against any party and therefore the same is not subject either to enforcement or to injunction.

"(*b*) It prays that the defendant common carriers, who are not proper parties to this proceeding except on their own motion, be enjoined from collecting the demurrage mentioned, when no order inhibiting the same has been made by the Interstate Commerce Commission, and in the absence of such an order this court has no power to grant such relief.

"(*c*) It prays that the defendant common carriers be required to repay to complainant all sums heretofore wrongfully collected as demurrage, when this court has no power or jurisdiction to grant such relief, either with or without an order of the Interstate Commerce Commission directing such repayment."

The court, declining at the threshold to consider the demurrers and motion to dismiss, postponed their consideration until the hearing on the merits. There was a consent by all the defendants except the United States and the Interstate Commerce Commission that the case be heard upon the evidence and documents introduced before the Commission and the report of that body. The

United States and the Interstate Commerce Commission, however, on the overruling of its demurrer and a refusal to grant its motion to dismiss, elected to stand thereon and declined to plead further.

In disposing of the case, the court considered it in a two-fold aspect—first, as to its jurisdiction; and, second, as to the merits of the case. On the first subject it held, *a*, that it had jurisdiction of the cause, and that the refusal of the Interstate Commerce Commission to afford relief to the Procter & Gamble Company was, for the purposes of jurisdiction of the court, the exact equivalent of an order of the Commission granting affirmative relief, and, *b*, as a corollary of this power it was further decided that there was jurisdiction to award pecuniary relief for demurrage if any was illegally exacted. On the merits, however, it was decided that the Interstate Commerce Commission had rightfully refused to grant relief and that there was no foundation for the contention that the property of the company in its private tank cars was taken without due process of law by the demurrage regulations. On this subject it was declared that as the company had accepted the provisions of the published tariffs concerning the use of the tank cars, therefore those cars were submitted to the regulations which the carriers had lawfully established. In other words, the court concluded that because the company had availed of the proffer of the railroads to use the cars in transportation and pay for their use a stated sum, the company had acquired no right to disregard restrictions against preferences and discriminations embodied in the act to regulate commerce.

The case was then brought here by the appeal of the Procter & Gamble Company. That company insists that the court below erred in not awarding the relief which was asked and in dismissing the petition. On the other hand the Interstate Commerce Commission and the railroads insist that the court was right in refusing relief and dis-

missing the bill. Before we can come, if at all, to consider the merits, however, it is necessary to dispose of the question concerning the jurisdiction of the court below to entertain the petition, because the United States insists at bar, as it did in the lower court, that the court erred in overruling the demurrer to the jurisdiction and refusing to dismiss the cause for want of jurisdiction.

The provisions of the act to establish the Commerce Court fixing the jurisdiction of that court are stated in the first section of the act of June 18, 1910, 36 Stat. 539, c. 309, now § 207 of the Judiciary Act of March 3, 1911, 36 Stat. 1087, 1148. And in view of the necessity of having the provisions of the section immediately in mind we reproduce them. They are as follows:

"SEC. 207. The Commerce Court shall have the jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June eighteenth, nineteen hundred and ten, over all cases of the following kinds:

"First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

"Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

"Third. Such cases as by section three of the Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

"Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as

amended, are authorized to be maintained in a circuit court of the United States.

"Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

"The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this chapter shall not affect the jurisdiction possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

The question to be decided is this: Does the authority with which the Commerce Court is clothed in virtue of these provisions invest that body with jurisdiction to redress complaints based exclusively upon the conception that the Interstate Commerce Commission, in a matter submitted to its judgment and within its competency to consider, has mistakenly refused, upon the ground that no right to the relief claimed was given by the act to regulate commerce, to award the relief which was claimed at its hands? In other words, the important question is, Is the authority of the Commerce Court confined to enforcing or restraining, as the case may require, affirmative orders of the Commission, or has it the power to exert its own judgment by originally interpreting the administrative features of the act to regulate commerce and upon that assumption treat a refusal of the Commission to grant relief as an affirmative order and accordingly pass on its correctness?

Turning for the elucidation of the question to the jurisdictional provisions, it is plain that although all of the four numbered subdivisions composing the section may serve to throw light upon the issue for decision the solution of the question must intrinsically be found in a correct interpretation of the second subdivision. We say this because clearly the first deals alone with cases for the en-

forcement of orders of the Commission as therein described; the third deals only with cases brought under the act of February 19, 1903, which is wholly foreign to the subject here reviewed, since the act referred to relates only to proceedings to enjoin either discriminations or departures by carriers from their published rates, and the fourth refers exclusively to the right to mandamus conformably to § 20 or 23 of the act to regulate commerce, which sections are concerned with the performance of certain duties imposed upon carriers by the act to regulate commerce. The words of this second subdivision are: "Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission."

Giving to these words their natural significance we think it follows that they confer jurisdiction only to entertain complaints as to affirmative orders of the Commission; that is, they give the court the right to take cognizance when properly made of complaints concerning the legality of orders, rendered by the Commission and confer power to relieve parties in whole or in part from the duty of obedience to orders which are found to be illegal. No resort to exposition can add to the cogency with which the conclusion stated is compelled by the plain meaning of the words themselves. But if it be conceded for the sake of argument that the language of the provision is ambiguous a consideration of the context of the act will at once clarify the subject. Thus, the first subdivision provides for the enforcement of orders, that is, the compelling of the doing or abstaining from doing of acts embraced by a previous affirmative command of the Commission, and the second (the one with which we are concerned) dealing with the same subject from a reverse point of view, provides for the contingency of a complaint made to the court by one seeking to prevent the enforcement of orders of the Commission such as are contemplated by